

structures, conveyances, and equipment that receive, unload, and store, grain, and that is able to operate as an independent unit from other units of the grain handling operation. A grain handling operation may be one grain storage facility or may be comprised of many grain storage facilities on a single premises.

*Hay.* Host crops cut and dried for feeding to livestock. Hay cut after reaching the dough stage may contain mature kernels of the host crop.

*Host crops.* Plants or plant parts, including grain, seed, or hay, of wheat, durum wheat, and triticale.

*Infestation (infected).* The presence of Karnal bunt, or any identifiable stage of development (*i.e.*, bunted kernels in grain, bunted kernels or teliospores in seed) of the fungus *Tilletia indica* (Mitra) Mundkur, or the existence of circumstances that make it reasonable to believe that Karnal bunt is present.

*Inspector.* An APHIS employee or designated cooperator/collaborator authorized by the Administrator to enforce the provisions of this subpart.

*Karnal bunt.* A plant disease caused by the fungus *Tilletia indica* (Mitra) Mundkur.

*Limited permit.* A document in which an inspector affirms that a specified regulated article not eligible for a certificate is eligible for movement only to a specified destination and in accordance with conditions specified on the permit.

*Mechanized cultivating equipment and mechanized harvesting equipment.* Mechanized equipment used for soil tillage, including tillage attachments for farm tractors—*e.g.*, tractors, disks, plows, harrows, planters, and subsoilers; mechanized equipment used for harvesting purposes—*e.g.*, combines, grain buggies, trucks, swathers, and hay balers.

*Movement (moved).* The act of shipping, transporting, delivering, or receiving for movement, or otherwise aiding, abetting, inducing or causing to be moved.

*Person.* Any association, company, corporation, firm, individual, joint stock company, partnership, society, or any other legal entity.

*Plant.* Any plant (including any plant part) for or capable of propagation, in-

cluding a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.

*Seed.* Wheat, durum wheat, and triticale used for propagation.

*Soil.* The loose surface material of the earth in which plants grow, in most cases consisting of disintegrated rock with an admixture of organic material.

*Soil-moving equipment.* Equipment used for moving or transporting soil, including, but not limited to, bulldozers, dump trucks, or road scrapers.

*State.* The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

*Straw.* The vegetative material left after the harvest of host crops. Straw is generally used as animal feed, bedding, mulch, or for erosion control.

*Tilling.* The turning of a minimum of the top 6 inches of soil.

[61 FR 52207, Oct. 4, 1996, as amended at 62 FR 23624, May 1, 1997; 62 FR 24751, May 6, 1997; 63 FR 31599, June 10, 1998; 64 FR 23752, May 4, 1999; 69 FR 8095, Feb. 23, 2004]

#### § 301.89-2 Regulated articles.

The following are regulated articles:

(a) Conveyances, including trucks, railroad cars, and other containers used to move host crops produced in a regulated area that have tested positive for Karnal bunt through the presence of bunted kernels;

(b) Grain elevators/equipment/structures used for storing and handling host crops produced in a regulated area that have tested positive for Karnal bunt through the presence of bunted kernels;

(c) Seed conditioning equipment and storage/handling equipment/structures that have been used in the production of wheat, durum wheat, and triticale found to contain the spores of *Tilletia indica*;

(d) Plants or plant parts (including grain, seed, and straw) and hay cut after reaching the dough stage of all varieties of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*) that are produced in a regulated area, except for straw/stalks/seed heads for decorative purposes that have been processed or manufactured prior

to movement and are intended for use indoors;

(e) *Tilletia indica* (Mitra) Mundkur;

(f) Mechanized harvesting equipment that has been used in the production of wheat, durum wheat, or triticale that has tested positive for Karnal bunt through the presence of bunted kernels; and

(g) Any other product, article, or means of conveyance when:

(1) An inspector determines that it presents a risk of spreading Karnal bunt based on appropriate testing and the intended use of the product, article, or means of conveyance; and

(2) The person in possession of the product, article, or means of conveyance has been notified that it is regulated under this subpart.

[69 FR 8095, Feb. 23, 2004]

#### § 301.89-3 Regulated areas.

(a) The Administrator will regulate each State or each portion of a State that is infected.

(b) Less than an entire State will be listed as a regulated area only if the Administrator:

(1)(i) Determines that the State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.89-2 that are equivalent to the movement restrictions imposed by this subpart; and

(ii) Determines that designating less than the entire State as a regulated area will prevent the spread of Karnal bunt; or

(2) Exercises his or her extraordinary emergency authority under 7 U.S.C. 150dd.

(c) The Administrator may include noninfected acreage within a regulated area due to its proximity to an infestation or inseparability from the infected locality for regulatory purposes, as determined by:

(1) Projections of the spread of Karnal bunt along the periphery of the infestation;

(2) The availability of natural habitats and host materials within the non-infected acreage that are suitable for establishment and survival of Karnal bunt; and

(3) The necessity of including uninfected acreage within the regu-

lated area in order to establish readily identifiable boundaries.

(d) The Administrator or an inspector may temporarily designate any nonregulated area as a regulated area in accordance with the criteria specified in paragraphs (a), (b), and (c) of this section. The Administrator will give written notice of this designation to the owner or person in possession of the nonregulated area, or, in the case of publicly owned land, to the person responsible for the management of the nonregulated area. Thereafter, the movement of any regulated article from an area temporarily designated as a regulated area is subject to this subpart. As soon as practicable, this area either will be added to the list of designated regulated areas in paragraph (g) of this section, or the Administrator will terminate the designation. The owner or person in possession of, or, in the case of publicly owned land, the person responsible for the management of, an area for which the designation is terminated will be given written notice of the termination as soon as practicable.

(e) The Administrator will classify a field or area as a regulated area when:

(1) It is a field planted with seed from a lot found to contain a bunted wheat kernel; or

(2) It is a distinct definable area that contains at least one field that was found during survey to contain a bunted wheat kernel (the distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the area's proximity to a field found during survey to contain a bunted kernel); or

(3) It is a distinct definable area that contains at least one field that has been determined to be associated with grain at a handling facility containing a bunted kernel of a host crop (the distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the area's proximity to the field associated with the bunted kernel at the handling facility).

(f) A field known to have been infected with Karnal bunt, as well as any non-infected acreage surrounding the